

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

11-20-14
04:59 PM

Order Instituting Rulemaking Regarding Revisions
to the California Universal Telephone Service
(LifeLine) Program.

R.11-03-013
(Filed March 24, 2011)

**PETITION FOR MODIFICATION OF DECISION 14-01-036 OF COX CALIFORNIA
TELCOM, LLC, DBA COX COMMUNICATIONS, (U-5684-C)**

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Dated: November 20, 2014

Table of Contents

I.	Introduction and Summary of Petition.....	1
II.	Standard for Petition for Modification.....	3
III.	California LifeLine Rules Must Be Consistent with State and Federal Laws.	3
IV.	The Commission Should Clarify How Carriers Should Apply the Minimum Elements Rule Under Decision 14-01-036.	7
V.	Application of Both the Minimum Elements Rule and Rule 9.3.2.2 Contravenes Section 871.5.....	13
VI.	Wireline LifeLine Service Providers Should Be Granted Authority To Request An Exemption From the Minimum Elements Rule	13
VII.	Conclusion	16

Table of Authorities

Federal Statutes

47 U.S.C. § 253(b)	5
47 U.S.C. § 254(e)	6
47 U.S.C. § 254(f)	6

Federal Cases

AT&T, Inc. v. United State of America, 629 F.3d 505 (5th Cir. 2011)	6
---	---

California Public Utilities Code

California Public Utilities Code, Section 871.5	passim
California Public Utilities Code, Section 875	8

California Cases

California Manufacturers' Assn. v. Public Utilities Com., (1979) 24 Cal.2d 836	4
Imperial Merchant Serv. Inc. v. Hunt, (2009) 47 Cal. 4th 381	4

Commission Decisions and General Orders

Decision 14-09-014	4
Decision 14-01-36	passim
Decision 12-12-038	5, 6
Decision 10-11-033	5, 8
Decision 10 07-050	4
Decision 07-09-020	5
Decision 03-05-035	5
Decision 96-10-066	6
General Order 153	passim
General Order 96-B	16

Pursuant to the Commission’s Rules of Practice and Procedure (“Commission Rules”), Rule 16.4, Cox California Telcom, L.L.C., *dba* Cox Communications (U-5684-C) (“Cox”) timely submits this petition for modification of Decision (“D.”) 14-01-036 (“Petition”).

I. Introduction and Summary of Petition.

In D.14-01-036 (“Decision”), the Commission modernized the California LifeLine program by adopting a number of rules intended to facilitate participation in the California LifeLine program, and thereby, ensuring additional choices for LifeLine customers. As part of this effort, the Decision adopts a rule that requires LifeLine providers to make all retail plans that include the minimum LifeLine elements and are otherwise consistent with the LifeLine program rules eligible for the California LifeLine discount (the “Minimum Elements Rule”). This rule is broad and applies to promotions, among other service offerings that a carrier may provide to its customers. In the Decision, the Commission discusses all service providers having the ability to seek an exemption from this rule, but includes an ordering paragraph making the exemption available only to wireless providers.

In this Petition, Cox requests that the Commission clarify how LifeLine service providers should apply the Minimum Elements Rules to promotions as Cox has identified two options which it believes are reasonable methods for doing so. Additionally, Cox requests that the Commission eliminate an existing LifeLine program rule that when applied to promotions in conjunction with the Minimum Elements Rule will cause Cox, and likely other wireline LifeLine providers, to forgo a portion of the reimbursement for the discount that Cox is required to extend

to LifeLine customers.¹ This is true regardless of which method the Commission directs carriers to follow in applying the Minimum Elements Rule to promotions.

General Order (“GO”) 153 Rule 9.3.2.2 (“Rule 9.3.2.2”) calculates wireline LifeLine providers’ respective claims based on a \$5.00 payment floor for flat-rate LifeLine service and this prevents Cox from recovering the full specific support amount (“SSA”) when the LifeLine service rate is less than \$5.00. The Decision must be modified because the Minimum Elements Rule requires wireline carriers to offer promotions that result in LifeLine customers paying *less than* \$5.00 for LifeLine flat-rate service, but Rule 9.3.2.2 requires wireline carriers’ claims for reimbursement to be calculated as if the LifeLine customer paid *more than* \$5.00.²

Finally, text in the Decision allows all LifeLine providers to seek an exemption from the Minimum Elements Rules, but the corresponding ordering paragraph in the Decision and GO 153 rule refer only to wireless providers.³ Accordingly, to ensure the ordering paragraphs are consistent with the text of the Decision and that this rule is applied in an equitable way and without adverse competitive consequences, Cox requests that the Commission modify the Decision to clarify that all LifeLine service providers may seek an exemption from the Minimum Elements Rule.

Summarily, Cox requests the Commission:

- Clarify how LifeLine service providers should apply the Minimum Elements Rule;
- Eliminate Rule 9.3.2.2 so that wireline LifeLine providers’ claims will be based on the actual LifeLine rate – and not an assumed LifeLine payment floor; and

¹ Generally, the Commission has reimbursed LifeLine providers for lost revenues associated with providing LifeLine service which includes an amount equal to the difference between a carrier’s LifeLine rates and charges and its regular tariffed rates and charges.

² The \$5.00 assumed price floor is for flat rate LifeLine service and there is a \$2.50 assumed rate floor for measured rate LifeLine service.

³ See, D.14-01-036, p. 45 and Ordering Paragraph No. 24(b)(iv).

- Correct Decision 14-01-036 to reflect the text in the body of the decision allowing all LifeLine providers to also seek an exemption from the Minimum Elements Rule.

II. Standard for Petition for Modification.

Consistent with Commission Rule 16.4(b), Cox concisely states the justification for the requested modifications and the requested relief in Articles IV, V and VI below and has included specific wording for the requested changes in Attachment A, attached hereto. Additionally, attached hereto, as Attachment B, is a declaration identifying new and changed facts that support the relief requested in this Petition, as required by Commission Rule 16.4(b). Finally, the Decision was issued in January 2014, and thereby, this Petition is timely filed within one year and is being served on all parties in R.11-03-013, as required by Commission Rules 16(c) and (d).

III. California LifeLine Rules Must Be Consistent with State and Federal Laws.

A. The Moore Act Mandates That California LifeLine Program Rules Are Equitable, Nondiscriminatory and Without Competitive Consequence.

A fundamental principal of the LifeLine program has always been that providers offering LifeLine service at a discounted price may seek reimbursement from the federal and/or state LifeLine funds for lost revenues associated with providing such discounted service. In adopting corresponding LifeLine program rules, the Commission must comply with Section 871.5⁴ in which the Legislature directed the Commission to adopt LifeLine program rules that are equitable, nondiscriminatory and without competitive consequences:

The furnishing of lifeline telephone service is in the public interest and should be supported fairly and equitably by every telephone corporation, and the commission, in administering the lifeline telephone service program, should implement the program in a way that is equitable, nondiscriminatory, and without competitive consequences for the telecommunications industry in California. (Emphasis added).

⁴ All Section references herein are to the California Public Utilities Code, unless stated otherwise.

Section 871.5 clearly sets forth the Legislature’s directive for the Commission to implement a LifeLine program that meets three distinct criteria. A cardinal rule of statutory construction requires that the Commission give meaning to every word in a statute.^{5 6} The Commission cannot ignore any of the three criteria in Section 871.5 and must interpret them to have their usual and ordinary meaning.⁷

Cox acknowledges that the Commission recently stated that wireless carriers and wireline carriers are not similarly situated for purposes of LifeLine, and to the extent that they are similarly situated, the rules at issue on re-hearing of D.14-01-036 were not unreasonably discriminatory because there was a rational basis for the different treatment.⁸ For purposes of this Petition, Cox does not challenge the Commission’s determination of issues presented and resolved in D.14-09-014, but submits that the rules described herein are not equitable and have adverse competitive consequences in contravention of Section 871.5, unless modified as requested herein. Further, with respect to the nondiscrimination requirement and the rules at

⁵ See Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006, R.06-10-005, D.10-07-050. In this Decision, the Commission confirmed its initial decision that PU Code Section 5890(a) clearly prohibits two things: discrimination and denial of access and went on to state that “The rules of statutory construction require that *we give meaning to all provisions of a statute, in this case, both discrimination and denial of access.*” *Id.*, p. 40 (emphasis added).

⁶ Section 871.5 is clear in identifying three criteria that the Commission should comply with, but even if the Commission were to find that the plain language of the statute was not clear, then the Commission would nonetheless still be required to grant this Petition. This is because the rules of statutory construction require the Commission to apply the plain meaning of the statute and prohibit the Commission from making “Interpretive constructions which render some words surplusage, defy common sense, or lead to mischief or absurdity.” *California Manufacturers' Assn. v. Public Utilities Com.*, (1979) 24 Cal.2d 836, 844 (citations omitted).

⁷ See *Imperial Merchant Serv. Inc. v. Hunt*, (2009) 47 Cal. 4th 381, 2009 Cal. LEXIS 8030. In this decision, the Supreme Court sets out the following rules of statutory construction, “We must look to the statute's words and give them “their usual and ordinary meaning.” (*DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 601 [7 Cal. Rptr. 2d 238, 828 P.2d 140].) “The statute's plain meaning controls the court's interpretation unless its words are ambiguous.” (*Green v. State of California* (2007) 42 Cal.4th 254, 260 [64 Cal. Rptr. 3d 390, 165 P.3d 118]). *Id.*, at 387-388

⁸ D.14-09-014.

issue in this Petition, to the extent wireline and wireless LifeLine providers are similarly situated, there is not a rational basis justifying the disparate application of the rules. Importantly, based on the text in the Decision, it appears that the Commission had intended to apply the exemption to all Lifeline providers, but inadvertently left out a corresponding ordering paragraph applicable to wireline providers.⁹

Accordingly, the Petition is necessary and the Commission must modify the Decision to ensure that all LifeLine program rules are equitable, nondiscriminatory and without negative competitive consequences for wireline providers, and thus, in compliance with Section 871.5.

B. Federal Law Requires the California LifeLine Program Rules To Be Competitively-Neutral and LifeLine Support To Be Explicit.

In addition to complying with California law, the Commission must ensure that the California LifeLine program continues to be consistent with the federal Telecommunications Act (“FTA”) and corresponding FCC rules. Like state law, federal law requires the Commission to adopt universal service program rules that are competitively-neutral, and the Commission has already recognized that it must comply with 47 U.S.C. § 253(b)¹⁰ which states:

State regulatory authority

Nothing in this section shall affect the ability of a State to impose, on a *competitively neutral basis* and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. (Emphasis added).

By way of example, the Commission has concluded that in the context of the California LifeLine program competitively-neutral means that the LifeLine program rules must not operate

⁹ See D.14-01-036, p. 45.

¹⁰ See D.07-09-020, D.03-05-035.

to the detriment of any LifeLine provider.¹¹ This is especially true with respect to carriers of last resort, which today are all wireline providers that must provide LifeLine service, as compared to wireless carriers that have the option, but are not required, to offer LifeLine service.¹²

FTA Section 254(f) allows the Commission to adopt only those LifeLine program rules that are consistent with the FCC's rules.¹³ Further, FTA Section 254(e) states that universal support must be explicit. Explicit subsidies have been described as those amounts which provide "carriers or individuals with specific grants that can be used to pay for or reduce the charges for telephone service."¹⁴ By adopting the SSA structure, the Commission ensured that carriers would be provided explicit support corresponding to the discount they extend to their LifeLine customers and not required to forgo support or otherwise be forced to recover the lost amounts in rates charged to other customers. Moreover, ensuring that California LifeLine support is explicit ensures that the program is equitable and without adverse competitive consequences. As described below, the Commission must modify the Decision so that wireline carriers will receive the requisite explicit support when complying with the Minimum Elements Rule.

¹¹ See D.03-05-035, p. 21 (the Commission confirming that an outside contractor could operate in a way that would not be the detriment of any carrier).

¹² The Commission requires carriers of last resort ("COLRs") to offer California LifeLine service. D.10-11-033, p. 3. See also D.12-12-038.

¹³ FTA Section 254(f) states: "A State may adopt *regulations not inconsistent with the Commission's rules to preserve and advance universal service*. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms." (Emphasis added).

¹⁴ See *AT&T, Inc. v. United State of America*, 629 F.3d 505 (5th Cir. 2011) 2011 U.S. App. LEXIS 76. Further, implicit subsidies have been described as being "more complicated and involve the manipulation of rates for some customers to subsidize more affordable rates for others." *Id.* Consistent with the FTA, in Decision 96-10-066, the Commission replaced then-existing implicit subsidies included in certain carriers' rates: "By replacing these implicit subsidies with an explicit subsidy fund, the CHCF-B was designed to facilitate competitive pricing for services other than basic service, while preserving the affordability of essential basic service." D.12-12-038, p. 3.

IV. The Commission Should Clarify How Carriers Should Apply the Minimum Elements Rule Under Decision 14-01-036.

To facilitate competition and ensure that LifeLine customers have a choice of affordable service options, the Commission required LifeLine providers to make any of their respective service plans that meet the minimum LifeLine requirements eligible for the California LifeLine discount.¹⁵ Instead of having a single LifeLine service offering and corresponding rate to which the federal discount and the SSA would be applied, the Commission directed carriers to apply the applicable SSA to all eligible plans, including promotional offerings. The Decision states:

All plans, including bundled service plans, promotional service plans, and family plans, that meet or exceed the minimum service elements and are consistent with California LifeLine rules shall be eligible for the California LifeLine discounts. To the extent the plans meet or exceed the minimum service elements, the California LifeLine provider must apply the applicable support to the plan chosen by the California LifeLine participant, the person qualified for and receiving LifeLine service based on conformance to the eligibility rules and confirmation of eligibility through the enrollment process.¹⁶

Cox submits that in the context of promotional offerings, this rule could be applied in at least two different ways – both of which will result in wireline carriers not being reimbursed the applicable SSA for certain promotions.¹⁷ Below, Cox explains the two methods it believes are most reasonable and consistent with the Decision and requests that the Commission clarify the method carriers should follow.

A. In Applying the Minimum Elements Rule to Promotions, Carriers Could Apply the Applicable SSA In A Manner Consistent with the 2010 Decision.

By directing carriers to deduct the “applicable support” to the “plan chosen” by the LifeLine subscriber, the Minimum Element Rule appears consistent with the 2010 Decision that

¹⁵ D.14-01-036, pp. 36, 44-45. See Finding of Fact No. 23; and Ordering Paragraph No. 18 and Attachment D which includes General Order 153, Appendix A.

¹⁶ Id., p. 36.

¹⁷ Declaration, ¶¶ 5-6.

requires LifeLine providers to determine their LifeLine rate by first deducting the federal support and then the full value of the SSA from the basic service (i.e. *non-LifeLine*) rate.¹⁸ In the context of a promotion, the provider would first determine the *applicable monthly rate to be paid by the basic service subscriber under the promotional offer*, and then apply the federal and SSA support to determine the resulting rate to be paid by the LifeLine subscriber under the promotion (“Option 1”).

For example, without a promotional rate, in San Diego, Cox charges \$19.99 for flat-rate basic service, plus \$4.90 for the associated EUCL, for a total of \$24.89. When a customer in San Diego is approved under the LifeLine program, the customer will pay the capped rate of \$6.84¹⁹ for LifeLine service²⁰ and is not required under current LifeLine rules to pay the EUCL.²¹ To calculate its reimbursement, Cox deducts the federal support of \$9.25 from the \$24.89 monthly rate and accounts for its LifeLine rate of \$6.84. This results in an SSA of \$8.80 that Cox may be reimbursed for from the California LifeLine fund. The federal support, the SSA and the amount paid by the LifeLine subscriber compensate Cox in full for providing discounted LifeLine service, including the waived EUCL.

If Cox were to offer its basic service customers a “30% Off” promotional service plan, then under the Decision, Cox could first calculate the promotional rate for flat-rate basic service in order to determine the applicable LifeLine rate. In this example, the promotional rate for the

¹⁸ The Commission concluded “After December 31, 2012, each carrier will establish a LifeLine rate that is no more than 50% of its basic service rate and no less than \$5.00 per month on an annual basis. The LifeLine rate should be computed by first deducting from a carrier’s basic rate the Federal Tiers 2-3 Subsidy [fn] (currently \$3.50) available to the carrier and then deducting up to the full value of the Specific Support Amount. If a carrier’s basic rate minus the combined subsidy from the Federal subsidy and the Specific Support Amount would result in a LifeLine rate that is lower than \$5.00 per month, then the carrier shall only deduct from a customer’s bill the portion of the Specific Support Amount that would result in a \$5.00 LifeLine rate for the customer.” D.10-11-033, pp. 52-53 (footnote omitted)..

¹⁹ See D.14-01-036, Ordering Paragraph No. 25(b).

²⁰ Id., p. 37.

²¹ Section 875 and GO 153, Rule 8.1.7.

basic service subscriber would be 30% off of the basic service rate of \$19.99 (i.e. \$6.00 promotional discount), or \$13.99. Cox would then add in the \$4.90 for the associated EUCL, for a total basic service promotional rate of \$18.89.

To calculate the corresponding LifeLine rate for this promotion under Option 1, Cox would then apply the federal support of \$9.25 to the promotional rate and Cox's SSA of \$8.80 (i.e. the "applicable support" that Cox receives when providing service to a LifeLine customer not subscribing to a promotion). In applying these discounts, a LifeLine customer subscribing to this promotion would pay \$0.84 (i.e. \$18.99 less \$9.25 and less \$8.80).

Option 1 closely adheres to the language in the Decision and is consistent with the methodology that the Commission adopted in the 2010 Decision. It results in a lower rate to the LifeLine customer but allows for a larger amount drawn from the state LifeLine fund when compared to Option 2, described below.

B. In Applying the Minimum Elements Rule to Promotions, Carriers Could First Apply The Promotion to the LifeLine Rate.

The Decision could alternatively require carriers to first apply the promotion to the LifeLine rate. In other words, instead of starting with and applying the promotion to the basic service line rate, carriers *would first apply the 30% discount to the \$6.84 LifeLine rate,*²² and then apply federal support and applicable state support ("Option 2").

By way of example, under Option 2 Cox would apply the "30% Off" promotion to its LifeLine rate of \$6.84 resulting in a promotional LifeLine rate of \$4.79. To calculate the SSA Cox would receive for providing the LifeLine discount to the customer, Cox would deduct the federal support of \$9.25 and the LifeLine promotional rate of \$4.79 paid by the customer from its

²² Upon LifeLine rates no longer being capped at \$6.84, the 30% discount would be applied to the carrier's then current LifeLine rate for basic service – either flat rate or measured rate.

promotional basic service (i.e. non-LifeLine) rate of \$18.89.²³ Under Option 2, Cox should receive a SSA of \$4.85.

Option 2 helps to avoid customer confusion as it applies the offered promotional discount directly to the customer's LifeLine rate, which is consistent with the intent of promotional offers. It would result in the LifeLine customer paying a higher monthly rate for the LifeLine service as compared to Option 1. However, Cox would request a lower SSA than that which it would claim under Option 1.

Accordingly, Cox requests that the Commission clarify how carriers should apply the Minimum Elements Rule to promotions.

V. Application of Both the Minimum Elements Rule and Rule 9.3.2.2 Contravenes Section 871.5.

Regardless of which option the Commission determines carriers should follow, Cox is required to extend both the federal support and the California LifeLine support to its LifeLine customers, and thereby, Cox must be reimbursed for such support. Reimbursing Cox for the discount it extends to LifeLine customers is not only a fundamental underpinning of the LifeLine program, it is also necessary to ensure that LifeLine support is explicit, equitable, competitively-neutral, and thereby, consistent with state and federal law.

Under either Option 1 or Option 2, a Cox LifeLine customer will pay less than \$5.00 for LifeLine flat-rate service. However, under Rule 9.3.2.2, Cox's reimbursement claims will be calculated as if the customer paid at least \$5.00. This Rule states:

Beginning January 1, 2013, there will be an assumed payment floor of \$5.00 for California LifeLine Flat Rate Service and \$2.50 for California LifeLine Measured Rate Service, in the calculation of the SSA recovery.

²³ As described in Article IV.A, Cox's San Diego basic service offered under a 30% promotional discount is \$18.89.

As demonstrated above and illustrated in Attachment C, if Cox were to follow Option 1, then its LifeLine customers subscribing to the promotion in the example would pay \$0.84. However, Cox's reimbursement claim under Rule 9.3.2.2 would be calculated as if Cox received \$5 from the LifeLine customer. As a result, instead of receiving a SSA of \$8.80 which is the discount that Cox provides to the customer, Cox would receive \$4.64. Cox would be forced to forgo \$4.16 (the difference between the \$0.84 LifeLine rate and \$5 assumed payment floor) per month for each LifeLine customer that receives service under this promotion.

Similarly, as shown above and also in Attachment C, if Cox if were to follow Option 2, then its LifeLine customers subscribing to the promotion in the example would pay \$4.79. Again, Cox's claims for these customers would be calculated under a presumed payment floor of \$5.00. As a result, instead of receiving a SSA of \$4.85 which is the discount extended to the LifeLine customer, Cox would recover \$4.64 per customer. In this scenario, Rule 9.3.2.2 requires Cox to forgo \$ 0.21 of support from the California LifeLine fund (i.e. the difference between the \$4.79 LifeLine promotional rate and the \$5 assumed payment floor).

The effect of the rule as written is material and has adverse competitive consequences for wireline LifeLine providers such as Cox. Promotions running six months or more are frequent in the highly competitive voice services market. If even ten percent of Cox's LifeLine customers were eligible for promotions similar to the one described in the examples cited here, the cumulative effect would be substantial and unfair for Cox to have to absorb or pass along to its non-LifeLine customers. Eliminating the assumed payment floor Rule 9.3.2.2 will resolve this unreasonable and inequitable rule.

The Commission adopted the SSA as the methodology to determine the support amount a LifeLine provider receives for each LifeLine customer it serves. Requiring wireline carriers to

comply with rules that cause them to forgo the very support that the Commission expressly determined is available to them as part of the existing SSA reimbursement mechanism is not reasonable, equitable or without competitive consequence.

Since Rule 9.3.2.2 is not being applied to wireless carriers, there is no instance where a wireless provider is required to forgo recovering lost revenue associated with providing California LifeLine service, in the same manner as a wireline provider is required to do so. This is due in part to wireless providers not being required either to calculate their reimbursements with an assumed payment floor or to charge a maximum of \$6.84 for LifeLine service.²⁴ As such, a wireless LifeLine provider may increase the rate charged for LifeLine to ensure that it does not forgo any lost revenue.

For example, a wireless carrier providing a 1,000 plus minute plan or corresponding promotion for such plan is eligible to receive \$12.65 from the California LifeLine fund without regard to how much the customer pays for such plan.²⁵ Wireless carriers may charge less than \$5.00 for such offerings and still be reimbursed \$12.65, whereas wireline LifeLine providers who are required to offer eligible plans at less than \$5.00 will never be able to recover up to \$12.65. That is not equitable. Moreover, as discussed below, wireless carriers may seek an exemption from the Minimum Elements Rule, but wireline carriers, like Cox, cannot. As such, to the extent a wireline carrier wished to avoid the adverse consequence resulting from complying with the Minimum Elements Rule, it may not do so.

Further, the rules have negative competitive consequences in that wireline LifeLine providers must either offer certain promotions and forgo applicable SSA support or not offer

²⁴ D.14-01-036, Ordering Paragraph No. 25.

²⁵ For wireless carriers, “plans that offer 1,000 or more voice minutes, the fixed reimbursement shall be \$12.65 per participant.” Id., p. 40 (emphasis added). For wireline carriers, the maximum California LifeLine reimbursement amount (SSA) will be “up to \$12.65.” Id., p. 49 (emphasis added).

those promotions to *any of their customers*. Forcing wireline carriers to forgo promotions strips them of an important opportunity to fully and fairly compete in the marketplace, but moreover, it harms both basic service customers and LifeLine customers by depriving them of discounts and the benefits of competition that would and should otherwise be available to them.

As such, the LifeLine program rules are not equitable, have an adverse competitive consequence, are may be unreasonably discriminatory,²⁶ and therefore, must be modified. To remedy the current deficiencies, Cox requests that the Commission eliminate Rule 9.3.2.2. Importantly, eliminating the rule will ensure the LifeLine program rules are consistent with both state and federal law.

VI. Wireline LifeLine Service Providers Should Be Granted Authority To Request An Exemption From the Minimum Elements Rule.

A. The Decision Discusses An Exemption Available to All LifeLine Service Providers.

In adopting the Minimum Elements Rule, the Commission also authorized all “service providers” – and not just wireless LifeLine service providers - to “seek an exemption from this requirement and not offer all of its available retail plans that meet or exceed LifeLine elements to LifeLine participants.”²⁷ The Decision goes on to state that all LifeLine service providers may submit an advice letter, which among other things, would include an explanation of why certain plans would not be offered to LifeLine customers.²⁸

²⁶ To the extent that LifeLine providers are similarly situated, there does not appear to be a rationale basis for subjecting some providers’ claims to an assumed \$5.00 payment floor and/or not providing them the opportunity to be exempt from offering plans with rates that are less than \$5.00.

²⁷ D.14-01-036, p. 45.

²⁸ Id. The Commission concluded, “Service providers may seek an exemption from this requirement and not offer all of its available retail plans that meet or exceed LifeLine elements to LifeLine participants by filing a Tier 2 advice letter and identifying: 1) all retail plans that meet or exceed LifeLine elements; 2) name(s) of entity(ies) through which these retail plans are offered, whether a

The text addressing the exemption is included in “Section 4.7 - Comparing the Current California LifeLine Program and the Next Stage California LifeLine Program Adopted in this Decision.” This section is not specific to wireline or wireless providers, but instead, generally identifies the three primary differences between the then-existing rules and the rules being adopted in the Decision. Notably, the Minimum Elements Rule and the corresponding exemption is not included in the portion of the Decision that addresses wireline specific requirements at pages 48-50, nor is it included in that portion that addresses wireless specific requirements at pages 50-62.

Unfortunately, the corresponding ordering paragraph allows *only* wireless carriers to seek an exemption:

California LifeLine wireless providers seeking an exemption as permitted by this Decision from the duty of a LifeLine carrier to offer LifeLine subscribers all plans and phones, shall file a Tier 2 advice letter explaining the proposed plans and phones they intend to offer or plans or phones they do not propose to offer to LifeLine subscribers and the reasons why such plans or phones should not be available to LifeLine subscribers.²⁹

While the text of the Decision demonstrates that the exemption should be available to all LifeLine service providers, this Ordering Paragraph does not expressly authorize wireline carriers to submit an exemption request.³⁰ Since the ordering paragraphs must correspond with the findings in the body of the Decision, the Commission must modify the Decision.

Additionally, in the situation described above in Article V, where a customer pays less than \$5.00 for LifeLine service and the wireline carrier cannot recover the applicable SSA due to Rule 9.3.2.2, the wireline carrier has no other means for seeking relief. This is the type of situation where an exemption would be appropriate for a wireline LifeLine provider.

subsidiary, D/B/A and/or brand; and 3) retail plans that they do not wish to offer to LifeLine participants with an explanation.” Id.

²⁹ D.14-01-036, Ordering Paragraph No. 24(b)(iv) (emphasis added).

³⁰ Declaration, ¶ 7.

Nothing in the Decision indicates that wireline carriers would or should be treated differently than wireless carriers for purposes of obtaining an exemption from the Minimum Elements Rule. It appears to Cox that the Commission inadvertently omitted a corresponding ordering paragraph applicable to wireline carriers, and thereby, Cox respectfully requests the Commission remedy this error.³¹

While eliminating Rule 9.3.2.2 as described above will remedy the problems that Cox has identified to date in implementing the Minimum Elements Rule, it may not remedy other issues concerning the extension of all promotions, bundled service plans and other retail plans to LifeLine customers.³² Just like wireless carriers, wireline LifeLine providers may have legitimate reasons for not extending a given plan to LifeLine customers, including but not limited to a provider not receiving a SSA that fully reimburses the provider for the LifeLine discount. Accordingly, wireline LifeLine providers should have the same opportunity that wireless LifeLine carriers have in obtaining an exemption from the Minimum Elements Rule.

To achieve its intended goals, the Commission must ensure that rules it adopts do in fact facilitate competition and choice in the LifeLine market. Allowing wireless carriers but not wireline carriers to seek an exemption from the Minimum Elements Rule is not equitable, will have adverse competitive consequences and could be discriminatory in that the Decision is silent as to a rational basis. As such, Cox respectfully requests that the Commission grant this Petition and order the relief requested herein such that the California LifeLine program complies with Section 871.5.

B. LifeLine Service Providers Should Be Allowed to Seek Exemptions By Filing Either Tier 1 or Tier 2 Advice Letters.

³¹ Id., ¶ 8.

³² Id.

The Decision directs carriers seeking an exemption from the Minimum Elements Rule to file a Tier 2 advice letter. In light of the difference between promotions and other service offers, Cox requests that the Commission permit all LifeLine providers to file (a) a Tier 1 advice letter when seeking an exemption for any promotional plan; and (b) a Tier 2 advice letter when seeking an exemption for any non-promotional plans. When seeking an exemption from offering promotions to LifeLine subscribers, for example, a Tier 1 advice letter is appropriate and reasonable in that carriers should not be delayed to offer a promotion to the marketplace.³³ Promotions by their nature are intended to address an immediate need, for a limited period of time. Requiring carriers to wait for approval would allow their competitors to respond with a competing promotion. This would not be fair and would certainly have adverse competitive consequences. It also will cause delay in non-LifeLine consumers receiving the benefit of the promotion.

Accordingly, Cox requests that the Commission grant LifeLine providers the ability to file Tier 1 advice letters when requesting an exemption for a promotional plan.

VII. Conclusion.

For all the reasons stated herein, Cox respectfully requests that the Commission modify the Decision to allow wireline carriers to collect a support amount that reimburses them for lost revenue associated with providing promotions to LifeLine customers, as required by the Decision. To do this Cox recommends that the Commission:

- Clarify how LifeLine service providers should apply the Minimum Elements Rule;
- Eliminate Rule 9.3.2.2 so that wireline LifeLine providers' claims will be based on the actual LifeLine rate – and not an assumed LifeLine payment floor; and

³³ GO 96-B, General Rule 5.2 provides that Tier 2 advice letters are effective upon Staff approval.

- Correct Decision 14-01-036 to reflect the underlying text of the decision allowing all LifeLine providers to also seek an exemption from the Minimum Elements Rule.

Dated: November 20, 2014

Respectfully submitted,
/s/ Margaret L. Tobias

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Attachment A

Proposed Modifications To D.14-01-036

Pages 37-38

4.4. Monthly Service Rate Caps and Maximum Monthly Reimbursement Amounts for California LifeLine Wireline

Based on comments from the parties and from the public at the eight PPHs conducted throughout the state, we find that the caps on the rate for California LifeLine wireline service for flat-rate local service at \$6.84 and for measured-rate local service at \$3.66 are reasonable and should be extended through June 30, 2015. [FN omitted] California LifeLine will also continue to support and cap the rates in Extended Area Service Exchanges (EAS) [FN omitted] to June 30, 2015. Similarly, we cap the monthly reimbursement amount per participant (SSA) for all California LifeLine providers that provide California LifeLine wireline consistent with the service elements in General Order 153 Appendix A-1 (in Attachment D of this Decision) at \$12.65 through June 30, 2015.²¹ ETCs. However, in light of the Commission adopting a rule that requires LifeLine providers to make any service offering, including bundled offerings and promotions, that meets or exceeds the minimum LifeLine service elements available to LifeLine customers, we eliminate the rule that calculates wireline LifeLine providers' claims subject to an assumed payment floor. With certain service offerings, such as promotions, this new rule will require a LifeLine provider to offer LifeLine service at rates that are less than the assumed payment floors, and as such, this rule would prevent the provider from being made whole. Our goal is to expand service offerings available to LifeLine customers. As such, we cannot maintain rules that will prevent carriers from offering promotions to their customers due to financial or other concerns.

Moreover, as discussed below, we do not currently require wireless carriers to adhere to a maximum LifeLine rate or to be subject to an actual or assumed payment floor of \$5.00. It is not equitable or reasonable for wireline LifeLine providers to have their claims subject to an assumed payment floor, and not subject wireless LifeLine providers to the same requirement. Additionally, it is not reasonable for the Commission to require carriers to make certain service offerings available to LifeLine customers without also allowing those carriers to collect a SSA that corresponds to the benefit we require them to extend. Finally, to promote technological neutrality and to prevent adverse competitive consequences, our rules should not operate to the detriment of wireline LifeLine providers competing in the marketplace. Accordingly, we hereby eliminate GO 153, Rule 9.3.2.2 and direct Staff to update the general order accordingly.

Page 45

Service providers may seek an exemption from this requirement and not offer all of its available retail plans that meet or exceed LifeLine elements to LifeLine participants by filing an Tier 2 advice letter and identifying: 1) all retail plans that meet or exceed LifeLine elements; 2) name(s) of entity(ies) through which these retail plans are offered, whether a subsidiary, D/B/A and/or brand; and 3) retail plans that they do not wish to offer to LifeLine participants with an explanation. [FN omitted] Service providers may file (a) a Tier 1 advice letter when seeking an

exemption from offering promotional plans to LifeLine subscribers; and (b) a Tier 2 advice letter for exemptions for any non-promotional plans. If service providers want to make any changes, including adding new plans and/or removing plans that were approved through the exemption advice letter, they should file a new Tier 2 advice letter and request approval for those changes.

Finding of Fact 23

All service plans offered by a California LifeLine service provider, including bundled, family and promotional plans, should be eligible for California LifeLine support if they meet or exceed the applicable minimum California LifeLine service elements, unless the provider seeks an exemption as permitted herein.

New Finding of Fact

Subjecting wireline California LifeLine providers' claims to an assumed payment floor precludes carriers in certain situations from recovering a SSA that corresponds to the discount they are required to extend to their LifeLine customers.

Conclusion of Law 18

All LifeLine telephone service plans, including bundled, promotional, and family plans, which meet or exceed the minimum service elements and are consistent with California LifeLine rules, shall be eligible for the California LifeLine discounts, unless the provider seeks an exemption as permitted herein.

New Conclusion of Law

Public Utilities Code Section 871.5 requires the Commission to adopt LifeLine program rules that are equitable, nondiscriminatory and without competitive consequences. California LifeLine rules must also be consistent with federal law.

New Conclusion of Law

California LifeLine providers should not have their claims subject to an assumed payment floor. General Order 153, Rule 9.3.2.2 is eliminated.

Ordering Paragraph 24(b)(iv)

California LifeLine ~~wireless~~ providers seeking an exemption as permitted by this Decision from the duty of a LifeLine carrier to offer LifeLine subscribers all plans and phones, shall file either a Tier 1 or a Tier 2 advice letter, as permitted herein, and as applicable, explaining the proposed plans and phones they intend to offer or plans or phones they do not propose to offer to LifeLine subscribers and the reasons why such plans or phones should not be available to LifeLine subscribers.

Appendix D, page D1 (i.e. General Order 153, Appendix A-1)

All plans, including bundled service, promotional service, and family plans, that meet or exceed the minimum service elements and are consistent with California LifeLine rules shall be eligible for the California LifeLine discounts, unless an exemption is requested. The California LifeLine provider must apply the applicable support to the plan chosen by the California LifeLine participant (Participant) to the extent the plans meet or exceed the minimum service elements.

Attachment B

Declaration of Esther Northrup

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding Revisions
to the California Universal Telephone Service
(LifeLine) Program.

R.11-03-013
(Filed March 24, 2011)

**DECLARATION OF ESTHER NORTHRUP IN SUPPORT OF PETITION FOR
MODIFICATION OF DECISION 14-01-036**

I, Esther Northrup, hereby state and declare as follows:

1. My title at Cox California Telcom, LLC (“Cox”) is Senior Director, State Regulatory Affairs. My business address is 5651 Copley Drive, San Diego, CA 92111.

2. I am submitting this Declaration in support of the Petition For Modification of Decision 14-01-036 of Cox California Telcom, LLC, dba Cox Communications (U-5684-C). The statements contained in this Declaration are true of my own knowledge and, if called as a witness, I could competently testify to them.

3. As the Senior Director, State Regulatory Affairs, I am responsible for certain regulatory matters concerning Cox operating as a competitive local exchange carrier in California. Those duties include Cox offering basic service and LifeLine service to residential customers.

4. Upon it being issued, Cox promptly reviewed Decision 14-01-036 (“Decision”) to determine what if any changes Cox would need to implement. To ensure compliance with the new rule that requires LifeLine service providers to offer all retail offerings that include the minimum LifeLine requirements (“Minimum Elements Rule”), Cox promptly began reviewing promotions that it would be required to make available to its LifeLine customers.

5. Cox determined that the Decision should be clarified to provide more specific guidance to LifeLine providers regarding application of the Minimum Elements Rule.

Specifically, Cox identified two ways in which the rule could reasonably be applied.

6. Cox also determined that regardless of which of the two ways it follows in implementing the Minimum Elements Rule, Cox would be unable to claim a SSA equal to the discount Cox is required to extend to LifeLine customers subscribing to promotions due to the GO 153, Rule 9.3.2.2 (“Rule 9.3.2.2”). Specifically, this rule requires wireline LifeLine carriers’ claims to be calculated with an assumed payment floor of \$5.00 for California Lifeline flat-rate service and \$2.50 for California Lifeline measured rate service.

7. In reviewing the Decision, Cox also identified text at pages 44-45 of the Decision that allows all LifeLine service providers to request exemptions from the Minimum Elements Rule. Cox also identified Ordering Paragraph No. 24(b)(iv) in the Decision which expressly authorizes wireless LifeLine providers to seek an exemption. As such, if Cox were to offer a promotion like the one described in the Petition, where a LifeLine customer pays less than \$5.00 for LifeLine flat-rate service, then Cox would not recover a SSA corresponding to the discount extended to the customer due to Rule 9.3.2.2 and Cox would have no means of seeking relief.

8. With regard to all LifeLine service providers being able to seek an exemption from the Minimum Elements Rule, it appears to Cox that the Commission inadvertently omitted a corresponding ordering paragraph applicable to wireline carriers.

9. At this time, upon information and belief, Cox does not know of any, but anticipates that there could be reasons other than the requirements in Rule 9.3.2.2 that would require Cox to seek an exemption from the Minimum Elements Rule. Consistent with D.14-01-

036, for any plans that Cox would not offer to LifeLine customers in the future, Cox will submit an advice letter with an explanation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except as to the matters that are therein stated on information and belief, and as to those matters I believe them to be true.

Executed on November 20, 2014, at San Diego, California.

/s/ Esther Northrup

Esther Northrup

Attachment C
Promotion Example

<u>Flat-Rate Basic Service Line Rate With and Without Promotion (Non-Lifeline Service)</u>					
	No Promotion	30% Off Promotion			
Basic Service Line Rate	19.99	13.99			
EUCL	4.90	4.90			
Flat-Rate Basic Service Rate:	24.89	18.89			
<u>LifeLine Rates With "30% Off" Promotion Under Option 1 and Option 2</u>					
	No Promotion	Option 1	Option 2		
		FCC Discount & SSA Applied to Promotional Basic Service Rate	30% Promotion Applied to \$6.84 LineLife rate		
Flat-Rate Basic Service Rate	24.89	18.89	18.89		
FCC Lifeline Discount	9.25	9.25	9.25		
CA LifeLine Discount (SSA)	8.80	8.80	4.85		
Lifeline Service Rate	6.84	0.84	4.79		
<u>California LifeLine Claim Reimbursement With 30% Promotion Under Options 1 and Option 2</u>					
	No Promotion	Option 1	Option 2		
Discount Received by LifeLine Customer / SSA To be Claimed	\$8.80	\$8.80	\$4.85		
LifeLine Rate Paid	\$6.84	\$0.84	\$4.79		
SSA Actually Reimbursed Due to Rule 9.3.2.2 (\$5.00 payment floor)	\$8.80	4.64	4.64		
Portion of Claimed SSA Not Reimbursed Due To Rule 9.3.2.2	\$0.00	\$4.16	\$0.21		